

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

MORRIS WHITE, LAWRENCE  
CARRINGTON, and GEORGE GARDNER,  
Individually and on Behalf of All other Persons  
Similarly Situated,

Plaintiffs,

v.

WESTERN BEEF, INC., WESTERN BEEF  
RETAIL, INC., MIGUEL ABINADER, DERRICK  
GARFIELD, and JOHN DOES #1-10,

Defendants.

**JOINT DISCOVERY PLAN**

07-CV-02345

(RJD) (JMA)

**VIA ECF**

Pursuant to the Federal Rule of Civil Procedure 26(f), the parties respectfully submit this report outlining their proposed discovery plan.

**I. BACKGROUND**

Plaintiffs allege that Defendants misclassified them as exempt from the overtime requirements of the Fair Labor Standards Act (29 U.S.C. § 201, *et seq.*) ("FLSA") and New York Labor Law (N.Y. Labor Law § 190, *et seq.*) ("NYLL"). Defendants denied Plaintiffs' allegations in their Answer with Affirmative Defenses to Plaintiffs' Consolidated Amended Complaint, and requested dismissal of the Complaint along with such other and further relief as deemed proper by the Court.

**II. PROPOSED PRELIMINARY SCHEDULING ORDER**

1. The parties propose the following discovery and related deadlines below:

- |     |   |                   |
|-----|---|-------------------|
| (a) | Deadline for completion of initial disclosures<br>required by Rule 26(a):           | February 16, 2009 |
| (b) | Motions to amend the pleadings, including joinder<br>of additional parties, due by: | February 23, 2009 |



- (c) First request for production of documents  
and first request for interrogatories due by: March 2, 2009
- (d) Responses to first request for production of  
documents and first request for interrogatories  
due by: April 16, 2009
- All fact discovery is to be completed by: August 21, 2009
- (e) Plaintiffs are to identify expert witnesses and  
serve reports from expert witnesses on or before  
September 4, 2009. Defendants are to identify  
rebuttal expert witnesses and serve reports from  
these expert witnesses on or before October 4,  
2009. Depositions of experts are to be  
completed on or before November 4, 2009.
- (f) Requests for leave to file dispositive motions, if any,  
are to be served and filed on or before: November 5, 2009

**2. Issues relating to the disclosure or discovery of electronically stored information, including the form or forms in which it should be produced**

At this time, the parties do not anticipate a need for deadlines distinct from those set forth above in paragraph (1), special procedures or court orders addressing electronic discovery. The parties do not anticipate an extensive exchange of electronic information.

**3. Issues relating to claims of privilege or protection as a trial-preparation material, including – if the parties agree on a procedure to assert such claims after production – whether to ask the court to include their agreement in an order.**

It is agreed between the parties that they will discuss an appropriate procedure to assert claims of privilege or protection as trial-preparation material at the time this becomes an issue, if it does become an issue. The parties do not anticipate an extensive exchange of electronic information.

**4. Changes to be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed.**

No changes at this time except that set forth above in paragraph (1).



## Docket & File

5. Any other order that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c).

The parties do not anticipate the need for entry of protective orders, at this time, pursuant to Rule 26(c).

All parties consent to the filing of this report by counsel for the filing party.

Respectfully submitted,

January 30, 2009

**LAW OFFICE OF WILLIAM  
COUDERT RAND**

By: 

William Coudert Rand (WR 7685)

711 Third Ave., Suite 1505  
New York, New York 10017

(212) 286-1425

*Counsel for Plaintiffs*

**NIXON PEABODY LLP**

By: 

Joseph J. Ortega (JO-3839)  
Tara Eyer Daub (TE-7943)

50 Jericho Quadrangle, Suite 300  
Jericho, NY 11753-2728

(516) 832-7500

*Counsel for Defendants*

The application is ☒ granted.  
☐ denied.

**SO ORDERED.**

s/ MJ Azrack

 Joan M. Azrack, U.S.M.J.

Dated: 2/23/2009

Brooklyn, NY